

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JARROW FORMULAS, INC.,

Plaintiff and Appellant,

v.

SANDRA HOGAN LaMARCHE et al.,

Defendants and Appellants.

B146708

(Super. Ct. No. SCO61964)

MODIFICATION ORDER

[NO CHANGE IN JUDGMENT]

THE COURT:**

The opinion filed March 25, 2002, is modified to correct a typographical error as follows.

On page 17 of the typed opinion, delete the second and third paragraphs in their entirety. In their place, insert the following single paragraph.

“When a special motion to strike is made, the trial court must consider two components. First, the court must consider whether the moving party has carried its burden of showing that the lawsuit falls within the purview of section 425.16. The moving party has the initial burden of establishing a prima facie case that plaintiff’s cause of action arises out of a defendant’s actions in the furtherance of the rights of petition or free speech.

(§ 425.16, subd. (b)(1); *Mission Oaks Ranch, Ltd. v. County of Santa Barbara* (1998) 65

* Pursuant to rules 976 and 976.1 of the California Rules of Court, the opinion is certified for partial publication with the exception of parts III.D. and III.E.

** Turner, P.J., Armstrong, J., and Mosk, J.

Cal.App.4th 713, 721, overruled on another point in *Briggs v. Eden Council for Hope & Opportunity*, *supra*, 19 Cal.4th at p. 1123, fn. 10; *Macias v. Hartwell* (1997) 55 Cal.App.4th 669, 673; *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1042-1043; *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman*, *supra*, 47 Cal.App.4th at p. 784; *Wilcox v. Superior Court*, *supra*, 27 Cal.App.4th at pp. 819-821.) Second, once the defendant meets this burden, the obligation then shifts to the plaintiff to establish a probability that she or he will prevail on the merits. (§ 425.16, subd. (b)(1); *Briggs v. Eden Council for Hope & Opportunity*, *supra*, 19 Cal.4th at p. 1115; *Kyle v. Carmon* (1999) 71 Cal.App.4th 901, 907; *Conroy v. Spitzer* (1999) 70 Cal.App.4th 1446, 1450; *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman*, *supra*, 47 Cal.App.4th at pp. 784-785.) In reviewing the trial court's order granting the special motion to strike, we use our independent judgment to determine whether the litigation arises out of protected activity (*Mission Oaks Ranch Ltd. v. County of Santa Barbara*, *supra*, 65 Cal.App.4th at p. 721; *Foothills Townhome Assn. v. Christiansen* (1998) 65 Cal.App.4th 688, 695) and a plaintiff has met its burden of establishing a probability of prevailing on a claim in the complaint. (*Monterey Plaza Hotel v. Hotel Employees & Restaurant Employees* (1999) 69 Cal.App.4th 1057, 1064; *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 653.)"